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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/715,988

11/18/2003

James J. Fitzgibbon

79076

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10/05/2005

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EXAMINER

BANGACHON, WILLIAM L

ART UNIT

PAPER NUMBER

2635

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

✓

Office Action Summary	Application No. 10/715,988	Applicant(s) FITZGIBBON ET AL.	
	Examiner William Bangachon	Art Unit 2635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. It is noted that there is no IDS submitted with this application. The listing of references in the specification [page 11, line 33] is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the Examiner on form PTO-892 has cited the references, they have not been considered.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the **"receiver"** recited in claims 2-3 and 12-13, **"transmitter"** recited in claims 2 and 12, **"stop, open, light or learn button"** recited in claims 6 and 16, **"biometric identification system"** for receiving a biometric signature recited in claims 9 and 20, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure

number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the Examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

4. Claims 2, 9, 12, 18 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 and 12 recites the limitation "**the transmitter at the output**" in pages 14 and 15. There is insufficient antecedent basis for this limitation in the claims.

Claims 9 and 20 lacks an apparatus for detecting biometric signature. It is unclear how the controller receives a biometric signature.

Claim 18 recites the limitation "specific action button is a close button " in page

16. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 1-3 and 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by USP 3,609,390 (Feldman).

In claims 1 and 11, Feldman teaches of an entry control system (Fig. 2) for permitting authorized users to access a controlled area by moving a barrier or garage door (Fig. 1), comprising:

a specific action button / manual pushbutton (11) (i.e. safety or override button).

The pushbutton switch 11 acts both an entry request device and specific action button;

an entry request device for accepting a user data input (11 or 13);

a controller (20) operably coupled to the entry request device (11 or 13) and the specific action button (11) and having an output, as shown in Fig. 2,

such that the controller receives the user data input (i.e. input from pushbutton switch 11 or input from radio transmitter 13) {col. 2, lines 73+; col. 3, lines 18+} and an indication of a position of the barrier (limit switches) {col. 2, lines 43+} and determines

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based at least in part upon the user data input (i.e. open or close garage door) and the indication of the position of the barrier whether a first control signal should be generated at the output {col. 3, lines 3-12}, the controller also receiving an indication of an actuation of the specific action button (i.e. depression of pushbutton switch 11) and selectively generating a second control signal at the output based at least in part upon the indication of the position of the barrier {col. 3, lines 12-15}.

In claims 2 and 12, the system of claim 1 comprising a receiver communicatively coupled to the transmitter at the output, the receiver receiving the first and second control signals {col. 3, line 73+}.

In claims 3 and 13, the system of claim 2 comprising a barrier operator coupled to the receiver, the operator selectively moving the barrier upon receipt of the first and second control signals {col. 3, lines 12-15}.

10. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over USP 4,847,542 (Clark et al).

In claims 1, 4, 11 and 14, Clark et al teach of an entry control system (100) for permitting authorized users to access a controlled area by moving a barrier, comprising:

a specific action button (117) (i.e. secure push-button);

an entry request device for accepting a user data input (115) (i.e. door push-button);

a motor controller (120) operably coupled to the entry request device (115) and the specific action button (117) and having an output, as shown in Fig. 1,

such that the motor controller receives the user data input {col. 4, lines 34-38} and an indication of a position of the barrier {col. 4, lines 38-46} and determines based at least in part upon the user data input (i.e. up door or down door) and the indication of the position of the barrier whether a first control signal should be generated at the output {col. 7, line 48+}, the motor controller (120) also receiving an indication of an actuation of the specific action button (i.e. secure signal) and selectively generating a second control signal at the output based at least in part upon the indication of the position of the barrier {col. 9, lines 12+}.

Clark et al do not disclose expressly an entry request device for accepting user data input. However, it would have been obvious to one of ordinary skill in the art to recognize that the secure push-button of Clark is another form of a data input device, the data being a secure command data.

In claims 2 and 12, the system of claim 1 comprising a receiver communicatively coupled to the transmitter at the output, the receiver receiving the first and second control signals {col. 4, lines 11+}.

In claims 3 and 13, the system of claim 2 comprising a barrier operator coupled to the receiver, the operator selectively moving the barrier upon receipt of the first and second control signals {see flowchart of Fig. 2D}.

In claims 4 and 14, the system of claim 1 wherein the entry request device is a keypad {paragraph bridging cols. 4 and 5}.

In claims 5 and 15, the system of claim 1 wherein the first control signal opens the barrier (i.e. movement of the door is upward) and the second control signal closes the barrier {col. 10, lines 46-48. also see flowchart of Figs. 2A-2D}.

In claims 6 and 16, the system of claim 1 wherein the specific actuation button may be a close button, a stop button, an open button, a light button, or a learn button {col. 9, lines 19+}.

In claims 7 and 17, the system of claim 1 wherein the specific action button changes function after a predetermined time period {col. 9, lines 45+}. In this case, when the secure button is pressed the second time, the secure button changes to unsecure. Also see col. 7 lines 14-37 with regards to the controller time.

In claims 8 and 19, the system of claim 1 comprising apparatus (122) for detecting an RF-ID, and wherein the second control signal is not transmitted unless the controller detects an RF-ID. In this case, if the second control signal (secure signal) is not detected by the RF-ID receiver (122), obviously, it is equivalent to not having the secure signal transmitted, to one of ordinary skill in the art.

With regards to claims 9 and 20, if the system of Clark is equipped with a biometric sensor programmed to disable any input from being activated without proper authority, then obviously, the second control signal is not transmitted unless the controller receives a biometric signature, to one of ordinary skill in the art.

In claims 10 and 21, the system of claim 1 wherein the generation of the control signals is delayed for a predetermined time after the actuation of the specific action button. See col. 7, lines 12-37 with regards to the motor controller timer. In this case, if

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the garage door is moving up or down and the specific action button is triggered to cause the garage door to move to the opposite direction {col. 10, lines 46-49; col. 11, lines 5-9}, obviously, the generation of the control signal to reverse the direction of the motor is delayed for a predetermined time, depending on the type of motor used (usually given in the motor specification), to avoid ruining the motor, to one of ordinary skill in the art.

In claim 18, it would have been obvious to one of ordinary skill in the art to rewire the specific action button (secure button) of Clark to function as a stop button instead of close button.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

USP 5,841,253 and USP 5,751,224 (Fitzgibbon) are cited in that these patents are directed to garage door operators with safety features {see whole document}.

USP 6,437,527 (Rhodes et al), USP 4,475,069 (Tadokoro et al) are cited in that these patents teach of several types of specific action buttons, such as override buttons, emergency switch button, fire sensor button, etc. {see whole document}.

Office Contact Information

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12. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to William Bangachon whose telephone number is **(571)-272-3065**. The Examiner can normally be reached on 4/4/10.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Michael Horabik can be reached on **(571)-272-3068**. The fax phone numbers for the organization where this application or proceeding is assigned is **571-273-8300** for regular and After Final formal communications. The Examiner's fax number is **(571)-273-3065** for informal communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866-217-9197** (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.

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William L. Bangachon
Examiner
Art Unit 2635

September 30, 2005

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